

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

KENNETH KELLEY,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-22-00079-JD
)	
MARK BOWEN,)	
)	
Respondent.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 11, 2022, United States Magistrate Judge Amanda Maxfield Green issued a Report and Recommendation [Doc. No. 5] recommending that the Court dismiss Petitioner Kenneth Kelley’s petition for writ of habeas corpus without prejudice for Petitioner’s failure to pay the filing fee and failure to cure deficiencies in the petition. *See also* Order to Cure [Doc. No. 4] (identifying deficiencies and ordering Petitioner to cure deficiencies). This was so even after the Court sent Petitioner the appropriate forms. [*Id.*].

Judge Green advised Petitioner of his right to object to the Report and Recommendation by April 1, 2022. [Doc. No. 5 at 3]. Judge Green warned that Petitioner’s failure to make a timely objection waives the right to appellate review of the factual findings and legal issues in the Report and Recommendation. [*Id.*]. Petitioner has not filed any objection, paid the required filing fee, or cured any deficiencies identified in the Order to Cure. [Doc. No. 4]. The Court therefore ADOPTS the Report and Recommendation in full and finds that the petition should be DISMISSED without prejudice to refiling.

The Court also **DENIES** a certificate of appealability in this case. A court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “When, as here, the district court denies relief on procedural grounds, the petitioner . . . must show both ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.’” *Gonzalez v. Thaler*, 565 U.S. 134, 140–41 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

The Court has concluded that this habeas petition should be dismissed without prejudice for failure to pay the filing fee and to cure deficiencies. After considering this order, the Report and Recommendation, and the record as a whole, the Court finds that jurists of reason would not debate its decision to dismiss without prejudice and would not debate that the applicable certificate of appealability standards have been met. Thus, the Court **DENIES** a certificate of appealability.

In sum, the Court **ADOPTS** the Report and Recommendation [Doc. No. 5] in its entirety for the reasons stated therein, **DISMISSES** Petitioner’s Petition for Writ of Habeas Corpus [Doc. No. 1] without prejudice, and **DENIES** a certificate of appealability.

IT IS SO ORDERED this 10th day of June 2022.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE